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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,250	09/10/2004	Anteo Pelliconi	FE 6006 (US)	9070

34872 7590 09/28/2006

BASELL USA INC.
INTELLECTUAL PROPERTY
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ELKTON, MD 21921

EXAMINER

MESH, GENNADIY

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/507,250

Applicant(s)

PELLICONI ET AL.

Examiner

Gennadiy Mesh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 15-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment filed on July 31,2006.

The rejection have been maintained and altered in view of new set of Claims filled by Applicant on July 31,2006.

Specification

- 1.1 New Title and Abstract accepted by examiner.
- 1.2 Cancellation Claims 1-14 by Applicant is acknowledged.
- 1.3 New set of Claims 15 – 32 is acknowledged.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2.1. Claims 15 - 32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of Glogovsky (U.S. Patent No. 6,743,864).

Although the conflicting claims are not identical, they are not patentably distinct from each other because Applicant claimed essentially same polyolefin composition and same method of polymerization for producing this composition and even same application field – films and sheets produced from this composition by extrusion.

2.2. Composition claimed by Applicant is obvious modification of composition disclosed by Glogovsky (U.S. 6,743,864): Component A in Applicant's Claim 1 is identical to Component A disclosed by Glogovsky and used in same range in composition; Component B(1) is identical in composition and ethylene content, fully encompasses criteria of solubility in xylene (greater than 45% per Applicant and more than 70% by Glogovsky) and overlapping in viscosity of soluble fraction at 3.0 dl./g; Component B(2) is identical in composition, overlap in solubility(Applicant claimed solubility greater than 35% follow disclosed by Glogovsky preferable range greater than about 30% (see column 5, line 10 – 15)); ratios between B(1) and B(2) is also identical.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(f) he did not himself invent the subject matter sought to be patented.

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3.1 Claims 15-32 are rejected under 35 U.S.C. 102(f) because inventive entity of two conflicting inventions(Applicant and U.S. Patent No. 6,743,864) do not share common inventor and claimed subject matter of both inventions are substantially same and not patentably distinct.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned inventions, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

Response to Arguments

4. Applicant's arguments filed on July 31,2006 have been fully considered but have been found not persuasive:

- 4.1. Subject matter and language of new Claims 15 –32 are substantially the same as subject matter and language of old Claims 1-14. New Claims 15 –32 are not patentably distinct from old set of Claims 1-14.
- 4.2. Subject matter claimed in Applicant's Claims 15 –32 patentably not distinct and anticipated by Glogovsky (U.S. 6,743,864) as it explained above – see 2.2 of this Action.
- 4.3. Glogovsky (U.S. 6,743,864) did claimed identical process (see claims 11 and 13 of Glogovsky) as Applicant.
- 4.4. Glogovsky (U.S. 6,743,864) did claimed sheet(film) from identical composition – see claim 13 and 14 of Glogovsky.
- 4.5. The fact that Applicant and Glogovsky are commonly assigned(owned) is the basis for Double Patenting Rejection and rejection under 35 U.S.C. 102(f).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gennadiy Mesh whose telephone number is (571) 272 2901. The examiner can normally be reached on 8a.m - 4 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272 1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gennadiy Mesh
Examiner
Art Unit 1711

GM
09/08/06


James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700
